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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,731	09/17/2003	Wanda Kwiatkowski Daggs	03018	4673

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EXAMINER

BASINGER, SHERMAN D

ART UNIT	PAPER NUMBER
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3617

DATE MAILED: 09/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/665,731

Applicant(s)

DAGGS, WANDA KWIATKOWSKI

Examiner

Sherman D. Basinger

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

1. The prior art discussed in the specification, pages 1 and 2, was of record in the parent application and has been considered.
2. On page 7 of the specification, line 8 "20" should be -28-.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 14-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Michalochick et al in view of O'Link.

Michalochick et al disclose a buoyant shirt 12 comprising a personal floatation device for a wearer with inner and outer layers (see column 3, lines 9-12) forming a shirt configuration with an enclosure between the inner and outer layers with an upper opening 20 for a wearer's neck extending through both inner and outer layers, and with two side openings 18 through which the wearer's arms can extend being formed through the inner and outer layers on opposite sides of the upper opening, and a buoyant material 30 being confined within the enclosure between the inner and outer layers, the buoyant material extending between the upper openings and each side opening between a front portion of the enclosure to a rear portion of the shirt.

Michalochick et al does disclose a front bib section with protrusions 34 extending from a top of the bib section on both sides of the upper opening, but does not disclose floatation material extending beneath both side openings between the front portion of the enclosure and the rear portion of the enclosure. Note the that the bib 2 of O'Link has such protrusions 20. It would have been obvious to provide the bib 20 of Michalochick et al with protrusions similar to 20 of O'Link so that floatation material extending beneath both side openings between the front portion of the enclosure and the rear portion of the enclosure would be provided. Motivation to do so is to have the foam member of Michalochick et al provide flotation material under the arms of a wearer to help keep the foam member from riding up the torso of the wearer of the swimwear. As such, buoyant material would be located on both the front and rear of a wearer's torso and beneath both side openings so that the protrusions would extend from a wearer's front torso to a wearer's rear torso.

The buoyant material 30 of Michalochick et al has sufficient volume to hold the wearer's head above water.

It is considered that 12 of Michalochick et al has a tee shirt configuration such that the wearer's head and arms are inserted respectively through the upper openings and side openings when the buoyant shirt is donned.

In Michalochick et al the inner and outer layers are joined together around the upper opening and the side openings, the inner and outer layers are stitched

together around the upper opening and the side openings, the inner and outer layers are formed of an expandable material having a elasticity greater than natural textile fibers (see column 3, lines 50-55), and the buoyant material comprises a one-piece member having sufficient flexibility to be draped over a wearer's shoulders and around a wearer's sides beneath a wearer's armpits (see column 1, lines 62-65).

5. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Michalochick et al in view of O'Link and Cohn.

Michalochick et al discloses a personal floatation device including a buoyant foam member 30 fitting over a wearer's shoulders to fit over the majority of the front and rear of the wearer's upper torso, the buoyant foam member directly supporting the wearer's upper torso to maintain the wearer's head above water.

The buoyant foam member 30 of Michalochick et al does not fit beneath the wearer's arms wherein the buoyant foam member while having a solid trunk section 32 which fits over a wearer's front torso, does not have protrusions extending around the wearer's torso, the ends of these protrusions being spaced apart on a wearer's back torso.

The bib 32 of Michalochick et al does not have these protrusions. Note the that the bib 2 of O'Link has such protrusions 20. It would have been obvious to provide the bib 20 of Michalochick et al with protrusions similar to 20 of O'Link. Motivation to do so is to

have the foam member of Michalochick et al provide flotation material under the arms of a wearer to help keep the foam member from riding up the torso of the wearer of the swimwear.

The buoyant foam member 30 of Michalochick et al while comprising a one-piece member folded to fit over the wearer's shoulders, is not disclosed as being initially flat. Cohn discloses foam members 13 and 26 which are initially flat and placed between materials 8 and 12. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains in view of the teachings of Cohn to make the foam member 30 of Michalochick et al initially flat such that it is folded into its shape when placed into the swimsuit. Note that the member 30 of Michalochick et al is a flexible foam. Motivation to do so is to save on the cost of having to mold the foam member to the shape desired.

When the foam member of Michalochick et al is modified with the teachings of O'Link it will be folded to fit around the wearer's sides beneath the wearer's arms and constrained in a folded configuration to fit the wearer's upper torso and side openings for a wearer's arms will be formed between edges of protrusions on the buoyant foam member when in a folded configuration.

The buoyant foam member 30 of Michalochick et al is constrained by an outer garment 12 formed by inner and outer fabric layers surrounding the buoyant foam member and wherein the inner and outer fabric layers

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are formed of material having a greater elasticity than natural textile fibers-see column 3, lines 50-55.

The buoyant foam member 30 of Michalochick et al is free to shift between the inner and outer fabric layers (see column 3, lines 10-20) and the outer garment 12 completely surrounds the upper torso of its wearer and is donned by insertion of the wearer's head, neck and arms through openings in the outer garment and gaps in the foam member.

6. Claims 8-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Michalochick et al, O'Link and Cohn as applied to claim 1 above, and further in view of Le Blanc, Jr.

Michalochick et al does not disclose that the buoyant foam member is cut from a larger flat foam sheet so that multiple buoyant foam members for use in personal floatation devices can be cut from standard foam sheets. Note the teachings in column 4, lines 10-end of Le Blanc, Jr. In view of this teaching it would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains to cut the buoyant foam member 30 of Michalochick et al from a larger flat foam sheet so that multiple buoyant foam members for use in personal floatation devices can be cut from standard foam sheets.

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Michalochick et al when modified with O'Link, Cohn and Le Blanc, Jr. discloses a one-piece vest 30, cut from a flat, flexible buoyant material (Le Blanc, Jr.), the one-piece vest 30,

when in a flat configuration having a central trunk section 32 with a generally curved opening above the trunk section and spaced from a top edge thereof with a slot extending from the generally curved opening to the top edge thereof to form opposed upper segments 34 on opposite sides of the slot and the curved opening, the one-piece vest 30, when

in the flat configuration (Cohn), also including wings (O'Link) extending from opposite side edges of a trunk section 32 adjacent the lower edge thereof,

the one-piece vest being folded about a generally horizontal axis to form the personal flotation device so that the upper segments extend behind and are spaced from the trunk section so that the generally curved opening will surround the neck of a wearer of the personal flotation device, and with the wings being folded about generally vertical axes to also extend behind and spaced from the trunk section with the wings and the upper segments forming arm passages through which the arms of the wearer can extend,

the one piece vest being restrained in the folded configuration when worn so that the one-piece vest extends over the wearer's shoulders and under the wearer's armpits to support the wearer's torso.

The personal floatation device of Michalochick et al has the one-piece vest 30 disposed

between inner and outer layers (see column 2, lines 59-62), has the inner and outer layers comprising fabric layers joined around the generally curved opening forming a neck opening 20 and around openings along opposite sides to form arm openings 18, and has the wings provided in view of wings 20 of O'Link free to laterally shift between the inner and outer layers so that the personal floatation device can fit wearers of different sizes.


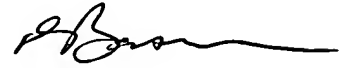

Michalochick et al does not disclose the one-piece vest as comprising a die cut member; however, in view of what is taught by Le Blanc, Jr. it would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains to use a die to cut the vest 30 of Michalochick et al. Motivation to do so is that by using die to cut the vest from a blank of foam, a better cut will result.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sherman D. Basinger whose telephone number is 703-308-1139. The examiner can normally be reached on M-F (6:00-2:30 ET).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel J. Morano can be reached on 703-308-0230. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 
Sherman D. Basinger
Primary Examiner
Art Unit 3617


sdb
9/16/04